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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/526,034
Filing Date: October 28, 2005
Appellant(s): BURR ET AL.

G. Matthew McCloskey
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 17, 2009 appealing from the Office action mailed October 16, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,341,255	Lapidot	01-2002
6,545,637	Krull et al.	04-2003
US 2003/0135304	Sroub et al.	07-2003
6,317,686	Ran	11-2001
5,465,088	Braegas	11-1995
6,490,519	Lapidot et al.	12-2002

Grubbs Test for Outliers (October 4, 2000)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 81-85, 90, and 98-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lapidot (6,341,255) in view of Krull et al. (6,545,637).

As per Claims 81 and 98, Lapidot discloses a method and system for providing traffic information comprising route results, the method and system comprising:

a route segment processor for performing, for each segment of a route between an origin point and a destination point, a time-dependent journey planning calculation based on a time during which a vehicle is predicted to be traveling through the segment, to produce a segment result (Claim 1, discloses calculating segments of a recommended route of travel using a starting point, an intermediate position, and a destination point based on a predetermined time interval for travel (i.e. time during which a vehicle is predicted to be traveling) and a measured vehicle velocity for the vehicle);

a route result formation means for forming a plurality of route results, the plurality of route results being formed based on a plurality of the segment results (Col. 6, Lines 27-34, discloses all driver's routes being selected on current and anticipated average traffic speeds on candidate roads and road segments), wherein the route result formation means comprises means for creating a matrix of vehicle speeds, wherein vehicle speeds over each segment are recorded with specific times of day such that the speeds are divided into a plurality of separate time of day intervals (Fig. 3, discloses a matrix of traffic speeds (i.e. vehicle speeds) divided by segments wherein each segments are recorded with specific time of day (i.e. $t=t_0$, $t=t_1$, $t=t_2$, etc...));

a rapid access means, in a digital storage means, for storing the plurality of route results (Claim 1, discloses storing route information in a route selecting computer); and

a user request process for accessing the rapid access means for use in responding to a user request for traffic information for a journey between the origin point and the destination point (Claim 31, via accumulating up-to-date traffic information for a route (between the origin point and the destination point)).

However, Lapidot fails to explicitly disclose a data receiver for receiving real time data; disseminating traffic information to vehicles on route; and verifying the real time data by correlating the real time data with data stored.

Krull et al. discloses a system and method for a navigational device with the concept of a data receiver for receiving real time data relating to real time vehicle location from a plurality of vehicle bound probes and other sensory data to ensure and maintain accuracy of segment results (Col. 3, Lines 38-52, via the positioning (i.e. vehicle location) and velocity data of a vehicle can be updated in real time on a continuous basis to obtain the current location of the vehicle); recording vehicle speeds with specific time of day such that the speeds are divided into a plurality of separate time of day intervals (Col. 9, Lines 41-53, discloses recording travel habit data which includes data relating to the thoroughfare, the time of day, and the historical travel speed of the device on the particular thoroughfare); disseminating means for disseminating said traffic information to vehicles on route via a radio data system, a mobile telephone or computer (Col. 4, Line 34-Col. 5, Line 3, discloses navigational information being disseminated to vehicles on route via a PDA, a cellular telephone, or

a vehicle-mounted unit); and verifying the real time data by correlating the real time data with data stored (Abstract, Col. 8, Lines 21-50, discloses verifying the current position of a vehicle (i.e. real time data) by determining the current position of the vehicle travel along a given route, if the vehicle has deviated from the designated route, the system calculates a new route based on the new current location).

Therefore, from the teaching of Krull et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus and method for providing route guidance to vehicles of Lapidot to include receiving real time data; disseminating traffic information to vehicles on route; and verifying the real time data by correlating the real time data with data stored as taught by Krull et al. in order to provide a user with more understandable, accurate, and timely route calculation capabilities.

As per Claims 82 and 99, Lapidot discloses determining a segment duration for traversing the segment based on a predicted vehicle speed for the segment at the time during which the vehicle is predicted to be traveling through the segment (Col. 6, Lines 27-65, discloses performing a time-dependent calculation for a route (Claim 1) which consists of a plurality of segments based on current and anticipated average traffic speeds (i.e. vehicle speeds) on candidate roads and roads segments).

As per Claims 83 and 100, Lapidot discloses summing a plurality of segment durations to produce an overall route duration (Fig. 6 discloses providing an estimated arrival time (i.e. overall route duration) based on a given route (Claim 1) which consists of a plurality of segments).

As per Claims 84 and 101, Lapidot discloses determining a predicted vehicle speed for traversing the segment based on the time during which the vehicle is predicted to be traveling through the segment (Col. 6, Lines 27-49, discloses determining a current and anticipated (i.e. predicted) average traffic speeds for the segments included in the route).

As per Claims 85 and 102, Lapidot discloses averaging a plurality of predicted vehicle speeds, each corresponding to a segment; to produce an overall predicted route speed (Col. 5, Lines 40-47, discloses averaging traffic velocity (i.e. vehicle speed) in each road segment).

As per Claim 90, Lapidot discloses the plurality of vehicle-bound probes including at least one mobile telephone (Col. 6, Lines 1-7, discloses vehicle location information (such as GPS information) being derived by a mobile communication device such as mobile telephones).

3. Claims 86, 91, 95, 96, and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lapidot (6,341,255) in view of Krull et al. (6,545,637) and in further view of Sroub et al. (US 2003/0135304).

As per Claims 86 and 103, the Lapidot and Krull et al. combination discloses the claimed invention as applied to Claims 81 and 98, above. However, the combination fails to explicitly disclose the time-dependent journey planning calculation being based on a time of day and a day of the week.

Sroub et al. discloses a system for computing a trip route with the concept of the time-dependent journey planning calculation being based on a time of day and a day of

the week during which the vehicle is predicted to be traveling through the segment ([0039] via determining routing information based on the time of day and the day of the week).

Therefore, from the teaching of Sroub et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot and Krull et al. combination to include the time-dependent journey planning calculation being based on a time of day and a day of the week as taught by Sroub et al. in order to provide the most efficient and most economic route for the user.

As per Claim 91, Lapidot et al. discloses a matrix of routes relative to at least a plurality of time of day divisions (Fig. 11k, via Time column) and a plurality of routes (Fig. 11k, via Segment ID column), based on the matrix of vehicle speeds (Fig. 11k, via Speed column). However, the Lapidot and Krull et al. combination fails to explicitly disclose recommending the most economic routes.

Sroub et al. discloses a system for computing a trip route with the concept of recommending the most economic routes (Claim 4, discloses producing one or more candidate routes that minimize one or more costs associated with traveling a candidate route based, at least in part, on data stored in the experience based travel database ([0039] which contains a plurality of time of day, a plurality of routes, and vehicle speeds (i.e. fast driver or slow driver)).

Therefore, from the teaching of Sroub et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot and Krull et al. combination to include recommending the most economic routes as taught

by Sroub et al. in order to provide the most efficient and most economic route for the user.

As per Claim 95, the Lapidot and Krull et al. combination discloses the claimed invention as applied to Claim 91, above. However, the combination fails to explicitly disclose identifying real time traffic congestion; and determining alternative routes.

Sroub et al. discloses a system for computing a trip route with the concept of identifying, in real time, an area of traffic congestion between the origin point and the destination point ([0055] via receiving real time traffic data in reference to the selected route); and determining an alternative, second matrix of recommended most economic routes based on the identified area of traffic congestion ([0056] discloses determining new routes based on modeling that integrates information stored in the historical database with the real time data (i.e. real time traffic data)).

Therefore, from the teaching of Sroub et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot and Krull et al. combination to include identifying real time traffic congestions; and determining alternative routes as taught by Sroub et al. in order to provide the most efficient and most economic route for the user.

As per Claim 96, the Lapidot and Krull et al. combination discloses the claimed invention as applied to Claim 95, above. However, the combination fails to explicitly disclose the traffic congestion being identified using a database of traffic patterns.

Sroub et al. discloses a system for computing a trip route with the concept of the traffic congestion being identified using a database of traffic patterns ([0056] via

modeling that integrates information stored in the historical database with the real time data (i.e. real time traffic data)).

Therefore, from the teaching of Sroub et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot and Krull et al. combination to include the traffic congestion being identified using a database of traffic patterns as taught by Sroub et al. in order to provide the most efficient and most economic route for the user.

4. Claims 87 and 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lapidot (6,341,255) in view of Krull et al. (6,545,637), and in further view of Sroub et al. (US 2003/0135304), Ran (6,317,686), and Examiner's Official Notice.

The Lapidot, Krull et al., and Sroub et al. combination discloses the claimed invention as applied to Claims 86 and 103, above. However, the combination fails to explicitly disclose the day of the week being selected from a group comprising Bank Holiday, Day before Bank Holiday, Day after Bank Holiday, Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday.

Ran discloses a method for predicting travel times with the concept of the day of the week being selected from a group comprising a Bank Holiday (Col. 5, Lines 31-43, via determining travel time based on holidays such as Memorial Day or the Fourth of July).

Therefore, from the teaching of Ran, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot, Krull et al., and Sroub et al. combination to include the day of the week being selected from a

group comprising a Bank Holiday as taught by Ran in order to provide an accurate travel time based on various traffic patterns in relation to holidays.

The examiner takes Official Notice that it is old and well known in the art that the days of a week are Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday, wherein a day before a Bank Holiday and a Day after a Bank Holiday would be considered either a Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot, Krull et al., Sroub et al., and Ran combination to include the days of a week as being Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday in order to provide a travel time based on various traffic patterns such as weekend traffic patterns versus weekday traffic patterns.

5. Claims 88 and 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lapidot (6,341,255) in view of Krull et al. (6,545,637) and in further view of Braegas (5,465,088).

The Lapidot and Krull et al. combination discloses the claimed invention as applied to Claims 81 and 98, above. However, the combination fails to explicitly disclose a look-up table.

Braegas discloses a method for providing a route to a drive with the concept of a look-up table (Col. 5, Lines 46-53, discloses a look-up table in relation to a starting point and a destination point).

Therefore, from the teaching of Braegas, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot and Krull et al. combination to include a look-up table as taught by Braegas in order to provide the user with easy access to stored data in relation to traffic information.

6. Claim 92 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lapidot (6,341,255) in view of Krull et al. (6,545,637) and in further view of Sroub et al. (US 2003/0135304) and *Grubbs Test for Outliers* (October 4, 2000).

Lapidot discloses analyzing vehicle speeds related to unforecastable events (Col. 6, Lines 50-65, discloses determining anticipated average speeds based on time-dependent characteristics such as accidents). However, the Lapidot, Krull et al., and Sroub et al. combination fails to explicitly disclose removing outlier vehicle speeds and vehicle speeds related to unforecastable events from the matrix of vehicle speeds using statistical analysis.

Grubbs Test for Outliers discloses a method for detecting outliers in a data set with the concept of removing outlier vehicle speeds and vehicle speeds related to unforecastable events from the matrix of vehicle speeds using statistical analysis (discloses outliers being expunged from a dataset so that no outliers exist in the dataset).

Therefore, from the teaching of *Grubbs Test for Outliers*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot, Krull et al., and Sroub et al. combination to include removing outlier vehicle speeds and vehicle speeds related to unforecastable events from the matrix of vehicle

speeds using statistical analysis as taught by *Grubbs Test for Outliers* in order to develop an accurate approximation of travel time for a given route.

7. Claims 93 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lapidot (6,341,255) in view of Krull et al. (6,545,637) and in further view of Sroub et al. (US 2003/0135304) and Ran (6,317,686).

As per Claim 93, Lapidot discloses a plurality of route matrix elements (Claim 1, discloses a plurality of route segments), wherein each route matrix element corresponds to a pairing of an origin point with a destination point (Claim 1, discloses each segment corresponding with a current location (i.e. origin point) and a destination location). However, the Lapidot, Krull et al., and Sroub et al. combination fails to explicitly disclose a route string, a shortest distance corresponding to the route string, a time corresponding to the route string, and a cost corresponding to the route string.

Ran discloses a method for providing travel time with the concept of a route string (Fig. 10A, discloses a route string (i.e., starting and destination location), a shortest distance corresponding to the route string (Fig. 10B, discloses shortest distance for the route string via entering desired route selection criteria as shortest distance), a time corresponding to the route string (Fig. 10B, discloses the estimated travel time for a route string), and a cost corresponding to the route string (Fig. 9, discloses the total cost for a route string).

Therefore, from the teaching of Ran, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot, Krull et al., and Sroub et al. combination to include a route string, a shortest distance

corresponding to the route string, a time corresponding to the route string, and a cost corresponding to the route string as taught by Ran in order to provide the user with information relating to the time and cost for a given route.

As per Claim 94, The Lapidot and Krull et al. combination discloses the claimed invention as applied to Claim 93, above. However, the combination fails to explicitly disclose a plurality of possible vehicle types.

Sroub et al. discloses a system for computing a trip route with the concept of a plurality of possible vehicle types ([0039] discloses entering vehicle types (i.e., cars, trucks, buses) as profile information).

Therefore, from the teaching of Sroub et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot and Krull et al. combination to include a plurality of possible vehicle types as taught by Sroub et al. in order to aid in determining the cost for traveling a selected route based on the vehicle type.

8. Claim 97 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lapidot (6,341,255) in view of Krull et al. (6,545,637) and in further view of Sroub et al. (US 2003/0135304) and Lapidot et al. (6,490,519).

As per Claim 97, the Lapidot, Krull et al., and Sroub et al. combination discloses the claimed invention as applied to Claim 95, above. However, the combination fails to explicitly disclose determining whether real time vehicle location data corresponds to a predetermined level of variance of vehicle speeds.

Lapidot et al. discloses a method for traffic monitoring and route guidance with the concept of determining whether real time vehicle location data from a plurality of vehicle-bound probes correspond to a predetermined level of variance from historic real time vehicle speeds (Col. 5, Lines 31-35, discloses reporting information to the traveler only if the travel information (i.e. vehicle speed or travel time) deviates, in accordance, with a predetermined deviation criteria (i.e. predetermined level of variance of vehicle speeds) from a known travel time value. Col. 10, Lines 30-34, discloses the deviation criterion includes deeming as a travel time deviation, an increase in travel time over a route (i.e. a change in vehicle speed) which affects the relative attractiveness of the route relative to at least one alternative route.).

Therefore, from the teaching of Lapidot et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Lapidot, Krull et al., and Sroub et al. combination to include determining whether real time vehicle location data corresponds to a predetermined level of variance of vehicle speeds as taught by Lapidot et al. in order to determine whether a selected route should be updated in order to provide the most economical route for the user.

(10) Response to Argument

Claims 81-85, 90, and 98-102 rejection under 103(a) in view of the Lapidot and Krull combination

With regards to Appellant's argument stating the Examiner has failed to adduce any clear articulation of the reasoning of the 103(a) obviousness rejection of Lapidot in view of Krull. Examiner respectfully disagrees. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Examiner asserts that both Lapidot and Krull are directed to providing route guidance to vehicles. The combination of Lapidot and Krull is a simple substitution of one known element for another to obtain predictable results. Krull provides real time data regarding vehicle location and speed which may be incorporated into Lapidot in order to provide more accurate route information (i.e. shortest route, fastest route, travel time) based on real time events occurring.

With regards to Appellant's argument regarding Lapidot failing to disclose "creating a matrix of vehicle speeds, wherein vehicle speeds over each segment are recorded with specific times of day such that speeds are divided into a plurality of separate time of day intervals." Examiner respectfully disagrees. Examiner asserts Lapidot discloses a matrix of vehicle speeds (i.e. traffic speeds) divided by segments wherein each segments are recorded with specific time of day (i.e. $t=t_0$, $t=t_1$, $t=t_2$, etc...) such that speeds are divided into a plurality of separate time of day intervals (via Fig. 3).

With regards to Appellant's argument regarding the Lapidot and Krull combination failing to disclose "receiving real time traffic data relating to real time vehicle location from a plurality of vehicle bound probes and other sensory data to ensure and maintain accuracy of segment results, and verifying the real time data wherein verifying comprises correlation with data stored in the rapid access means and other received sensory results." It is noted that the features upon which applicant relies (i.e., real time traffic data) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claims 81 and 98 recite "receiving real time data" rather than "receiving real time traffic data". Examiner asserts Krull discloses receiving real time data relating to real time vehicle location from a plurality of vehicle bound probes and other sensory data to ensure and maintain accuracy of segment results via Col. 3, Lines 38-52 which discloses the positioning (i.e. vehicle location) and velocity data of a vehicle can be updated in real time on a continuous basis to obtain the current location of the vehicle. Examiner asserts that Krull also discloses verifying the real time data by correlating the real time data with data stored (Abstract, Col. 8, Lines 21-50, discloses verifying the current position of a vehicle (i.e. real time data) by determining the current position of the vehicle travel along a given route, if the vehicle has deviated from the designated route, the system calculates a new route based on the new current location). The claim limitations of Claims 81 and 98 fail to recite real time traffic data being verified but rather simply real time data being verified which is disclosed in Krull. Appellant asserts that

"real time data" is not merely the location of a vehicle, but the traffic conditions in or at the vehicle's location. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner asserts the claim limitations of Claims 81 and 98 fail to recite real time data including traffic conditions in or at the vehicle's location.

Claims 86, 91, 95, 96, and 103 rejected under Lapidot '255 and Krull in further view of Sroub

Appellant asserts that the Sroub reference fails to cure the deficiencies relative to the independent claims 81 and 98. Examiner respectfully disagrees. Examiner asserts there are no deficiencies that exists with independent claims 81 and 98 as stated above in the response to arguments regarding Claims 81 and 98.

Claims 87 and 104 rejected under Lapidot '255 and Krull in further view of Sroub, in further view of Ran and Examiner's Official Notice

Appellant asserts that the Ran reference and Examiner's Official Notice fails to cure the deficiencies relative to the independent claims 81 and 98. Examiner respectfully disagrees. Examiner asserts there are no deficiencies that exists with

independent claims 81 and 98 as stated above in the response to arguments regarding Claims 81 and 98.

Claims 88 and 105 rejected under Lapidot '255 and Krull in further view of Braegas

Appellant asserts that the Braegas reference and Examiner's Official Notice fails to cure the deficiencies relative to the independent claims 81 and 98. Examiner respectfully disagrees. Examiner asserts there are no deficiencies that exists with independent claims 81 and 98 as stated above in the response to arguments regarding Claims 81 and 98.

Claim 92 rejected under Lapidot '255 and Krull in further view of Grubbs Test for Outliers

Appellant asserts that the Grubbs Test for Outliers reference fails to cure the deficiencies relative to the independent claim 81. Examiner respectfully disagrees. Examiner asserts there are no deficiencies that exist with independent claim 81 as stated above in the response to arguments regarding Claim 81.

Claims 93 and 94 rejected under Lapidot '255 and Krull in view of Sroub and Ran

Appellant asserts that the Ran reference fails to cure the deficiencies relative to the independent claim 81. Examiner respectfully disagrees. Examiner asserts there are no deficiencies that exist with independent claim 81 as stated above in the response to arguments regarding Claim 81.

Claim 97 rejected under Lapidot '255 and Krull in view of Sroub and in further view of Lapidot '519

Appellant asserts that the Lapidot '519 reference fails to cure the deficiencies relative to the independent claim 81. Examiner respectfully disagrees. Examiner asserts there are no deficiencies that exist with independent claim 81 as stated above in the response to arguments regarding Claim 81.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/F. L./

Examiner, Art Unit 3689

Conferees:

/Janice A. Mooneyham/

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